

HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON

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JOHN B. RUDOLPH*
JOSEPH R. MEMBRINO*
DONALD R. DINAN*
JOHN J. McDERMOTT*
JAMES B. WILCOX, JR.*
CRAIG A. KOENIGS*
JOHN J. CALLAHAN*
SANDEEP KATHURIA*

TULSA, OKLAHOMA
JAMES C. T. HARDWICK
THOMAS D. GABLE
THOMAS F. GOLDEN
LARRY W. SANDEL
ANDREW M. WOLOV
FRANK M. HAGEDORN
J. PATRICK CREMIN
J. KEVIN HAYES
MICHAEL D. GRAVES
JAMES D. SATROM
RICHARD A. GROENENDYKE, JR.
GRAYDON D. LUTHEY, JR.
DEL L. GUSTAFSON

OF COUNSEL
JOHN S. ESTILL, JR.
WILLIAM W. PRITCHARD
DAVID L. HILL*
MARY JOHNSON TIDHOLM
RAYMOND B. KELLY
AUDREY P. RASMUSSEN*
CLIVE A. SEYMOUR
JANE L. ALLINGHAM

MARK K. BLONGEWICZ
MICHAEL D. COOKE
KENNETH L. HUNT
B. KENNETH COX, JR.
DONALD L. KAHL
D. KENYON WILLIAMS, JR.
THOMAS P. SCHROEDTER
JAMES J. PROSZEK
JAMES M. REED
THOMAS A. CREEKMORE III
STEPHEN W. RAY
MARGARET A. SWIMMER
MICHAEL T. KEESTER
SUSAN L. GATES
RONALD O. RAY, JR.
KENNETH G. M. MATHER
RONALD A. WHITE
FRED M. BUXTON
STEVEN A. BROUSSARD
STEVEN W. SOULE*
MICHAEL L. NEMEC
JOSEPH D. FINCHER
ANGELYN L. DALE

TULSA, OKLAHOMA OFFICE
320 SOUTH BOSTON AVENUE
SUITE 400
TULSA, OK 74103-3708
TELEPHONE (918) 594-0400
FACSIMILE (918) 594-0505

A PROFESSIONAL CORPORATION

1120 20TH STREET, N.W.
SUITE 700, NORTH BUILDING
WASHINGTON, D.C.
20036-3406

TELEPHONE (202) 973-1200
FACSIMILE (202) 973-1212

<http://www.hallestill.com>

OKLAHOMA CITY, OKLAHOMA OFFICE
100 NORTH BROADWAY
BANK ONE CENTER, SUITE 2900
OKLAHOMA CITY, OK 73102-8865
TELEPHONE (405) 553-2828
FACSIMILE (405) 553-2855

NORTHWEST ARKANSAS OFFICE
ONE EAST CENTER STREET
SUITE 315
FAYETTEVILLE, AR 72701-5388
TELEPHONE (501) 973-5200
FACSIMILE (501) 973-0520

R. MARK PETRICH
PAMELA H. GOLDBERG
MARK BANNER
ROBERT F. DOUGHERTY
T. LANE WILSON
BETSY G. JACKSON
ROBERT P. FITZ-PATRICK
SARAH JANE MCKINNEY
LESLIE C. KNEESHAW
JOHN F. HEIL, III
MARSHALL J. WELLS
HEATHER L. CUPP
ANTHONY J. JORGENSEN
HEATHER R. CASE
KYLE D. FREEMAN
T. GENE MONROE, II
MONICA L. GOODMAN
W. DEKE CANADA
MICHAEL J. LISSAU
BONNIE N. HEFNER
JANICE L. GADDIS
KIMBERLY R. BIEDLER
KERI G. WILLIAMS

DAVID J. SCHAFER
JONATHAN D. CARLEDGE
JOHN J. TREBILCOCK

NORTHWEST ARKANSAS
CURTIS HOGUE
JAMES L. HARRIS

OKLAHOMA CITY, OKLAHOMA
H.B. WATSON, JR.
ROBERT D. NELSON
J. FRED GIST
MICHAEL E. SMITH
RALPH E. SEALS, JR.
DONNA N. BLAKLEY
RODNEY C. RAMSEY
SHARON T. THOMAS
DANIEL J. GLOVER
KENT A. GILLILAND
JON A. EPSTEIN
ELAINE R. TURNER
SUSANNA G. VOEGELI
J. TODD WOOLERY
*ADMITTED IN D.C.

WALTER B. HALL (1923-1986)
FRED S. NELSON (1928-1987)

May 15, 2002

RECEIVED

MAY 15 2002

Audrey P. Rasmussen
(202) 973-1210
arasmussen@hallestill.com

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: Request for Waiver by Highland Cellular, Inc. of Implementation
of TTY Digital Compatibility for 911 Emergency Calling for
Stations KNKN618 and KNKQ415, CC Docket No. 94-102

Dear Mr. Caton :

On behalf of Highland Cellular, Inc., and pursuant to the Fourth Report and Order, CC Docket No. 94-102, 15 FCC Rcd. 25216 (2002) and Section 1.925(b)(3) of the Commission's Rules, we hereby request a waiver of implementation of TTY digital compatibility for 911 emergency calling for Stations KNKN618 and KNKQ415 ("Request"). Highland operates its facilities in two rural cellular markets in Virginia and West Virginia (RSAs VA2A and WV7, respectively.)

Introduction

Highland initially committed to use TDMA technology for its network; however, recently because of the industry migration away from that technology, it has decided to transition its network from TDMA to GSM. Utilizing GSM will allow Highland's network higher speed data capabilities and its customers a wider array of mobile devices from GSM vendors.

The decision to transition to GSM was based on the abandonment of TDMA by the major carriers and the determination that conversion to GSM will allow Highland to better coordinate customer services with its neighboring carriers who employ GSM technology, as well as to

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expedite the provision of the next generation of advanced wireless services to customers, which will serve the public interest.

Highland Requires a Waiver Request

Although Highland understands the public safety importance of ensuring 911 access by persons with hearing and speech disabilities using TTY devices, its present circumstances warrant a waiver and an extension of the June 30, 2002 deadline.

Because TDMA was commonly the only technology choice in rural and small markets where adjoining larger markets were served by cellular carriers that had previously selected TDMA as their digital technology, small and rural market carriers found it necessary to follow the technology format of their neighboring large carriers in order to permit roaming and efficient wide-area services to customers of both carriers.¹

The abandonment of TDMA by certain large carriers in favor of other digital technologies has resulted in an apparent termination of TDMA handset product development. This is a circumstance beyond the control of Highland and necessitates a conversion to GSM technology. However, any such transition to GSM will not be feasible in less than a 12-18 month period of time.

As stated above, the decisions made by large carriers to migrate away from TDMA technology have caused manufacturers to abandon the development of new features for TDMA. Thus, smaller carriers like Highland are unable to obtain necessary on-going support and enhancements from its infrastructure providers.

It would be inequitable, unduly burdensome and contrary to the public interest to require Highland, a small, rural carrier, to meet the June 30, 2002 deadline. Small carriers must meet both market and regulatory demands working from a limited budget. It would be wasteful to implement upgrades in a TDMA network that is scheduled for replacement in the near future. Moreover, because most handset providers have ceased development of new TDMA handsets, it is unknown whether TDMA TTY-compatible handsets will ever be made commercially available. Therefore, if Highland was forced to make capital expenditures to meet the June 30, 2002 deadline, the upgrades would be extremely costly and unnecessary. These unnecessary costs would then be passed on to consumers, a situation that would not be in the public interest.

In view of the unique and unusual factual circumstances presented by Highland, adherence to the June 30, 2002 deadline would be unduly burdensome and contrary to the public interest. Accordingly, the Commission should grant the waiver request.

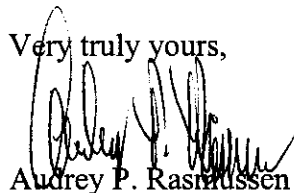
¹ Examples of cellular carriers that deployed TDMA technology in the Metropolitan Statistical Areas include AT&T Wireless, Cingular and US Cellular.

Waivers are appropriate whenever circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.² Section 1.925(b)(3) of the Commission's Rules explains that a waiver of the Commission's Rules with respect to public mobile services is appropriate whenever a party demonstrates either (1) that the underlying purpose of the rule would not be served or would be frustrated by its application to the instant case, and that grant of a waiver would be in the public interest, or (2) in view of unique or unusual factual circumstances to the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.³

Highland's Request satisfies the Commission's waiver standard set forth above. In this instance, unique and unusual circumstances exist, such as the lack of available TDMA TTY compatible handsets and the rural nature of Highland's markets. Further, enforcement of the June 30, 2002 deadline would be unduly burdensome to Highland, requiring it to spend its limited funds to upgrade a TDMA network at a time when most carriers are abandoning TDMA. Finally, with respect to the Commission's 911 Phase 11 rules in general, the Commission has indicated that a waiver would be granted in such "instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible..."⁴ This same standard must apply to the June 30, 2002 deadline by which digital wireless providers must be capable of transmitting 911 calls using TTY devices. In this instance, Highland has met this standard.

If there are any questions regarding this Request, please address them to the undersigned.

Very truly yours,



Audrey P. Rasmussen

APR:gln

cc: Pam Gregory, FCC

Mindy Littell, FCC

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² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

³ 47 C.F.R. §1.925(b)(3).

⁴ Revision of Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18,710, 18,718 (1996).